

STATE OF INDIANA)
) SS: BEFORE THE INDIANA SOLID
COUNTY OF MARION) WASTE MANAGEMENT BOARD

DEC 17 3 24 PM '92
CLERK OF SUPERIOR COURT
INDIANA
WASTE MANAGEMENT BOARD

IN THE MATTER OF:)
) CAUSE NO. _____
DENIAL OF THE PETITION FOR)
VARIANCE FROM CLOSURE RULES) PREVIOUS CAUSE NO. 91-S-J-488
OF GARY DEVELOPMENT CO., INC.)

PETITION FOR ADMINISTRATIVE REVIEW

The Petitioner Gary Development Co., Inc. (hereinafter referred to as "GDC"), by its counsel of record, hereby petitions for an administrative review of the Denial of the Variance issued November 25, 1992, and for its Petition states:

1. GDC is the owner and operator of a permitted sanitary landfill located in Lake County, Indiana, and holding Permit No. 45-2.
2. On or about August 29, 1989, Petitioner GDC by its counsel filed with the Commissioner of the Indiana Department of Environmental Management ("IDEM") a Petition for Variance under I.C. 13-7-7-6. GDC requested a variance from the then new Indiana Solid Waste Regulation adopted in August 1988, including closure and post-closure provisions, and to continue for approximately one-year to accept non-hazardous solid waste for landfill disposal in the remaining unfilled area of its permitted facility.
3. On November 25, 1992, the Assistant Commissioner for Solid and Hazardous

Waste Management denied the variance request by the letter which is attached hereto as Exhibit "A." Therein, the IDEM set forth four (4) reasons for the denial which were:

- a. The site has not been properly closed and remediation of the old fill area is likely needed;
 - b. Some areas of the site have slopes which are too steep and too flat and that must be reworked;
 - c. A plan must be developed which will stabilize the site and prevent it from contaminating groundwater in the area; and
 - d. Compliance with Rule 329 I.A.C. 2 does not create an undue hardship or burden on GDC.
4. Because GDC suspended its acceptance of solid waste for landfilling effective August 31, 1989, GDC has proceeded to close the site pursuant to the regulations effective prior to that date. Except for the unfilled area located within the northwest portion of the facility, the site is almost entirely closed pursuant to those regulations, including the regrading and reworking of slopes.
5. The Indiana Environmental Management Board as a predecessor agency to the Indiana Department of Environmental Management previously approved on February 28, 1983, in Cause No. N-53 a methodology for lining the walls of GDC's remaining fill area. An IDEM Administrative Law Judge subsequently determined on April 26, 1991, in Cause No. B-1357 that the western portion

of the clay perimeter wall around the site had been constructed according to the terms set forth in the Agreed Order in Cause No. N-53 and that this Agreed Order is still in effect.

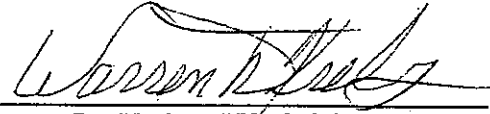
6. The Administrative Law Judge in Cause No. B-1357 also determined on April 26, 1991, that "this northern section remains unfilled because under the terms of the Agreed Order in Cause No. N-53, GDC, prior to filling it, was required to take four soil borings from the site's west wall," and determined that "the difference in the elevations of GDC's filled and unfilled sites contributed significantly to the ponding of water in the unfilled area."
7. The construction of the remaining perimeter wall pursuant to the terms and specifications set forth in the N-53 Agreed Order and the filling of the remaining lower elevation area of the site with non-hazardous solid waste is the only feasible method to prevent the ponding and migration of surface water runoff and of groundwater within this remaining area.
8. Because the period to complete the filling of this site has been estimated to be approximately twelve (12) months and because the remaining two to five acres constitutes only five percent of GDC's sixty-two (62) acre facility, compliance with the present regulations, including closure and post-closure, for the entire facility would create an undue burden and hardship.

WHEREFORE, Gary Development Co., Inc. petitions for an administrative review of

the denial of its Petition for Variance and requests the issuance of an Order granting it authority to fill the remaining area of its site with non-hazardous solid waste without complying with solid waste regulations which were not in effect on August 31, 1989.

Respectfully submitted,

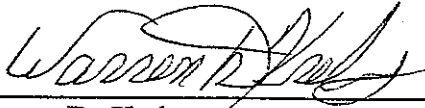
PARR RICHEY OBREMSKEY & MORTON

By 
Warren D. Krebs, #5340-06
Attorney for Gary Development
Co., Inc.

AFFIRMATION

I hereby affirm that I have been authorized by Gary Development Co., Inc. to make the representations within and to submit this Petition for Administrative Review to the Technical Secretary of the Indiana Solid Waste Management Board.

Dated: December 17, 1992

By: 
Warren D. Krebs



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We make Indiana a cleaner, healthier place to live

Evan Bayh
Governor
Kathy Prosser
Commissioner

105 South Meridian Street
P.O. Box 6015
Indianapolis, Indiana 46206-6015
Telephone 317-232-8603
Environmental Helpline 1-800-451-6027

2-10-1992
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W.D.K.

Via Certified Mail P 846-724-379

Mr. Warren D. Krebs
Parr, Richey, Obremskey and Morton
121 Monument Circle
Suite 500
Indianapolis, IN 46204-2994

November 25, 1992

Dear Mr. Krebs:

Re: Variance Request and Proper Closure
Gary Development Company, Inc.
Lake County

This is written in response to your variance request dated August 29, 1989, and to outline other concerns this agency has regarding proper closure and post-closure monitoring of the Gary Development Landfill.

Your request for a variance from the closure and post-closure requirements and request for a variance to continue accepting non-hazardous waste for a period of one year is hereby denied. It is this agency's position that compliance with Rule 329 IAC 2 does not create an undue hardship or burden on Gary Development Company, Inc.

This agency also notes that this site has not been properly closed and remediation of old fill areas is likely needed based on our observation of chronic leakage of groundwater into the site.

Given the concerns noted above, as well as the current configuration of the site with remaining fill space, a plan must be developed which will stabilize the site and prevent it from contaminating groundwater in the area. There are also several areas of the site which have slopes which are too steep or too flat that must be reworked.

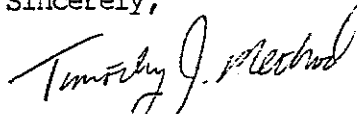
Please be advised that if you wish to challenge this decision to deny the variance request, IC 4-21.5-3-7 requires that you file a petition for administrative review. The petition must be submitted to the Technical Secretary of the Solid Waste Management Board, 105 South Meridian Street, P.O. Box 6167, Indianapolis, Indiana 46206-6167 within 15 days of your receipt of this notice. The decision to deny the variance request will become effective in 15 days if a petition for administrative review is not submitted within the prescribed time. The petition must include facts demonstrating that you are either the applicant, a person aggrieved or adversely affected by

the decision or otherwise entitled to review by law. Additionally, IC 13-7-10-2.5 requires that your petition include:

1. the name and address of the person making the request;
2. the interest of the person making the request;
3. identification of any persons represented by the person making the request;
4. the reasons, with particularity, for the request;
5. the issues, with particularity, proposed for consideration at the hearing; and
6. identification of the terms and conditions which, in the judgement of the person making the request, would be appropriate in the case in question to satisfy the requirements of the law governing documents of the type issued by the Commissioner.

Please contact Mr. Stuart Miller of this office at 317/232-3458 to arrange a meeting with staff to discuss appropriate closure options for this site.

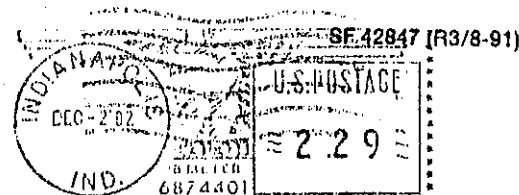
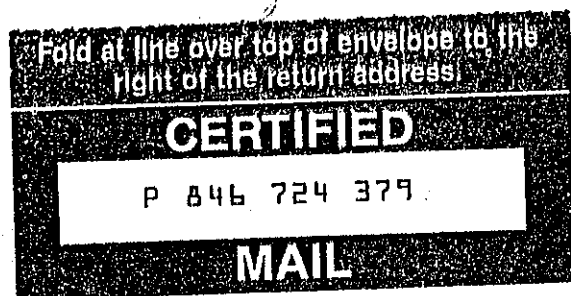
Sincerely,



Timothy J. Method
Assistant Commissioner
Solid and Hazardous Waste Management

STATE OF INDIANA
DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT
105 South Meridian Street
P. O. Box 6015
INDIANAPOLIS, INDIANA 46206-6015

ADDRESS CORRECTION REQUESTED



65-45
Mr. Warren D. Krebs
Parr, Richey, Obremskey and Morton
10 West Market St.
Suite 1600
Indianapolis, IN 46204-2970

